



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Wincor Management Group, Inc.

File: B-278925

Date: April 10, 1998

Allen D. Westbrook for the protester.

Marian E. Sullivan, Esq., Department of the Air Force, for the agency.

John Van Schaik, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Although specifications for the lease of commercial washers and dryers are stated in broad functional terms and include only minimal physical characteristics, protest that the specifications should be more clearly defined is denied since the specifications are sufficiently detailed so as to provide all offerors with a common understanding of what is required under the contract in order that they can compete intelligently on a relatively equal basis.
 2. Protest that a requirements format is not appropriate for a contract for the lease of commercial washers and dryers is denied where, consistent with Federal Acquisition Regulation § 16.503(b), the contracting agency anticipates a recurring need for the washers and dryers but it cannot predetermine the precise quantities of machines that will be needed.
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DECISION

Wincor Management Group, Inc. protests the terms of request for proposals (RFP) No. F41636-97-R-0115, issued by the Department of the Air Force for a requirements contract for the lease and maintenance of washers and dryers for Lackland Air Force Base.

We deny the protest.

The RFP sought proposals for a base year and 4 option years. The contractor is to lease to the Air Force all of the washers and dryers that the Air Force requires in the dormitories at Lackland Air Force Base and provide maintenance on those machines during the life of the contract. The contractor is to own the machines and will retake possession of them at the end of the contract.

The RFP was issued under the procedures set forth in Part 12 of the Federal Acquisition Regulation (FAR), "Acquisition of Commercial Items." As a commercial item solicitation, the RFP did not include detailed government specifications for the washers and dryers. Instead, when it was issued, the RFP included the following schedule of the line items for each year of the contract, each with an estimated quantity:

1. Washers, electric, 18 pound, top loading;
2. Dryers, electric, 18 pound, front loading;
3. Dryers, gas, 18 pound, front loading;
4. Dryers, gas, 30 pound, front loading;
5. Washers, electric, 18 pound, top loading;
6. Dryers, electric, 18 pound, front loading;
7. Removal and/or replacement of 18 pound machines due to renovations; and
8. Removal and/or replacement of 30 pound machines due to renovations;

The RFP was later amended to include two additional line items for each year of the contract. Those additional line items call for machines to support a temporary Reserve Officers Training Corps (ROTC) deployment in May through August of each year of the contract. As amended, the RFP includes a ninth line item under each year for 18 pound, top loading, electric washers and a tenth line item for 30 pound, front loading, gas dryers.

Beyond this information in the schedule, the only other description of the washers and dryers in the RFP was in a Statement of Need. That document includes, among other things, a scope of work section and a brief list of specifications.

Wincor, the incumbent contractor, first argues that the RFP is defective because it does not include detailed specifications for the washers and dryers. Wincor argues that neither the RFP schedule of items or the specifications set forth in the RFP Statement of Need include "the boiler plate specifications for laundry equipment found in all contracts." According to Wincor, the previous two solicitations for this requirement included detailed specifications and, since there is a vast range of equipment and prices available, offerors should be given more detailed information concerning the agency's needs.

The Congress has set forth as policy that Department of Defense (DOD) agencies and the National Aeronautics and Space Administration (NASA) shall "ensure that, to the maximum extent practicable," agency requirements for the procurement of supplies and services are defined so that commercial items may be procured to fulfill such requirements. 10 U.S.C.A. § 2377(a)(2) (West Supp. 1998). A key element of efforts to increase purchases of commercial products is stating requirements in broad functional or performance terms, rather than using detailed

military specifications. See 10 U.S.C.A. § 2377(a)(1); Federal Acquisition Regulation §§ 11.002(a), 11.101: Adventure Tech, Inc., B-253520, Sept. 29, 1993, 93-2 CPD ¶ 202 at 3, recon. denied, Adventure Tech, Inc.--Recon. and Costs, B-253520.2, B-253520.3, Feb. 9, 1994, 94-1 CPD ¶ 105.

This preference for broad product descriptions and nondevelopmental/commercial items is consistent with, and does not relieve the contracting agency of, the obligation to specify its requirements in a manner designed to achieve full and open competition. 10 U.S.C. § 2305(a)(1)(A) (1994); Adventure Tech, Inc., supra, at 4. That is, where an agency intends to acquire a commercial item, it is obligated to describe the item in a way that identifies the agency's needs with sufficient detail and clarity so that all vendors have a common understanding of what is required under the contract in order that they can compete intelligently on a relatively equal basis. Adventure Tech, Inc., supra, at 4.

Here, although the RFP specifications are stated in broad functional terms and include only minimal specific physical characteristics for the washers and dryers, we conclude that the specifications are sufficiently detailed. For the washers and dryers to be proposed under particular line items, the RFP schedule specifies the required capacity of the machines, whether they are required to be gas or electric powered, and whether particular dryers are to be front or top loaded. In addition, section 3.3 of the RFP Statement of Need includes various other minimum requirements for machines that are proposed. For example, section 3.3.3 specifies that all gas operated dryers shall be equipped with an electronic igniter, section 3.3.3.1 specifies that the contractor shall provide and install flexible gas lines from the dryers to the gas line wall feeder, and section 3.3.3.3 requires that 30 pound dryers have signs on the bottom front panel stating that the machine is not to be opened while it is drying. Although Wincor argues that offerors should be given more detailed information concerning the agency's needs, the RFP apparently includes those requirements that the agency considers essential and the protester does not indicate what additional information is necessary. Under the circumstances, and since no other prospective offerors have complained that the specifications are not sufficiently detailed, we conclude that the RFP included sufficient detail to provide offerors with a common understanding of what is required in order that they can compete intelligently on a relatively equal basis. See id.

Wincor also challenges the use of weight to specify the required capacity of the washers and dryers. According to Wincor, manufacturers do not rate their machines in pounds, but rather in cubic feet. In response, the Air Force argues that many manufacturers do in fact express the capacity of their washers and dryers in pounds. The agency also provided copies of advertisements and commercial literature that shows capacity of various washers and dryers in pounds. In addition, the Air Force states that, for any manufacturer whose commercial literature does

not express capacity in pounds, the agency will accept a letter from the manufacturer that includes that information. We conclude that the record does not support Wincor's allegation.

Wincor also argues that the RFP "confuses bidders with current need estimates versus projected need estimates," and that "future estimated quantities should not appear on this bid schedule prior to the need occurring." In this respect, Wincor argues that offerors should not be required to provide firm prices for future estimated requirements--in other words, requirements that are not specifically known at this time.

Essentially, Wincor is challenging the Air Force's decision to meet its needs using a requirements contract. In fact, when the Air Force responded to the protest by explaining why it used a requirements format, Wincor argued that "the solicitation may be improperly classified as a requirements contract." According to Wincor, since the range of latitude in ordering under the contract will be unpredictable, the use of a requirements format imposes an unreasonable financial burden on the contractor. Wincor argues that the schedule for the base year of the contract should not contain estimates for machines that may be called for at a later date and the agency should not expect a contractor to provide additional equipment at a later date than the contract start date for the same monthly price in any given year of the contract. Rather, according to Wincor, the schedule should only include those needs that are known when the RFP was issued and future estimated quantities should be separately priced (as the agency did with the ROTC requirements) or separately negotiated when the need arises.

The contracting agency has the primary responsibility for determining its needs and the best method of accommodating them, including the procurement format to be used. Eng'g and Prof'l Servs. Inc., B-262074, Nov. 21, 1995, 95-2 CPD ¶ 234 at 2. The use of requirements contracting is authorized by FAR § 16.503(b), which states that such contracts may be used when an agency anticipates recurring requirements but cannot predetermine the precise quantity of supplies or services needed during a definite period. Sunrise Int'l Group, Inc., B-261448, July 21, 1995, 95-2 CPD ¶ 43 at 3. Our Office will not overturn the agency's decision to use a particular procurement method unless the decision is shown to be arbitrary or unreasonable. See Eng'g and Prof'l Servs. Inc., supra, at 2.

The Air Force reports that it anticipates a recurring need for washers and dryers but it cannot predetermine the precise quantities of machines that will be needed. The RFP does include the agency's estimates of the quantities of the various machines that will be needed during each contract period and estimates of the number of machines that may need to be removed during each period.

Furthermore, in response to the concerns raised by Wincor, the RFP was amended to add two line items for short-term ROTC training from May to August of each year of the contract.¹

The agency states that a requirements-type contract is appropriate because it will allow the agency the flexibility to order what it needs and what it can afford during the contract period. As the record does not indicate, and Wincor provides no evidence to show, that the RFP's estimated quantities are inaccurate or somehow could be made more precise--by means of a different contract format--and since this approach serves the agency's needs, we have no basis to object to the Air Force's decision to use a requirements contract format.

To the extent that Wincor contends that the requirements format places too much risk on the contractor, the protest provides no basis for overruling the agency's decision. As previously stated, the contracting agency bears primary responsibility for determining the procurement format to be used. Eng'g and Prof'l Servs. Inc., supra, at 3. Risk is inherent in most types of contracts, especially fixed-price contracts such as this one, and the fact that an offeror, in computing its proposal, must consider a variety of scenarios that might differently affect its anticipated costs does not render a solicitation defective. Id. at 3-4.

Wincor also complains that the RFP includes notations that a number of locations in which washers and dryers are to be installed have inadequate exhaust systems. According to Wincor, it is unsafe to place washers and dryers in locations without adequate exhaust. In response to this allegation, the Air Force reports that the conditions affecting the adequacy of the exhaust systems in the noted buildings have been corrected and that the RFP was amended to remove the notations of inadequate exhaust systems.

¹Wincor initially argued in its protest that the RFP should be amended to add separate line items for machines that will be needed only for 2 1/2 months every year during ROTC training. Although the agency addressed this concern by amending the RFP to add the line items for washers and dryers for 4 months of ROTC training in each year, Wincor argues that it does not believe that the ROTC training lasts 4 months; nonetheless, the firm has provided no evidence to support this contention. Wincor also argues that the temporary ROTC usage "inevitably will not ever pay actual equipment cost because it remains in a storage building not producing revenue to help pay equipment mortgages." The point of amending the RFP to provide separate line items for the ROTC usage was to allow offerors to take into account when preparing their proposals that the agency's usage--and therefore its payment--for these machines will be shorter than for the machines provided under the other line items. We do not see why Wincor, and other offerors, cannot take these circumstances into account in preparing their prices.

Although Wincor challenges this explanation, arguing that it knows of no corrective action at the listed locations, the firm does not indicate that it has made any effort to determine whether the conditions it complains of still exist. Under the circumstances, and since the Air Force has reported that the conditions have been corrected, the record provides no support for this allegation.

The protest is denied.

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